



February 6, 2001

Mr. Noble D. Walker, Jr.  
Scott, Walker & Morgan, L.L.P.  
P.O. Box 1353  
Greenville, Texas 75403-1353

OR2001-0465

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143943.

The Greenville Police Department (the "department") received a written request from an attorney for the "entire file" regarding the investigation of an armed robbery during which the requestor's client was shot. You explain that although a criminal defendant has been convicted for the offense, the prosecution of a second defendant in this case is now pending. You state that much of the requested information has been released to the requestor. You contend, however, that the remaining portions of the department's file are excepted from public disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup>

We note at the outset that you state that the department received the records request on November 8, 2000, however you did not request a decision from this office regarding this matter until November 27, 2000. We therefore conclude that you failed to request a decision from this office within ten business days of receipt of the records request.

Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless

---

<sup>1</sup>You also contend that criminal history information is made confidential under chapter 411 of the Government Code. Our review of the records at issue did not reveal any criminal history information. Accordingly, we do not address the applicability of chapter 411 here.

there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977). Section 552.108 is not "other law" that makes information confidential. Because you raise section 552.108 here to protect only the interests of the department, and not those of a third party, this exception does not provide a compelling reason for withholding information presumed to be public in this instance. Therefore, none of the responsive information may be withheld under section 552.108 of the Government Code.

On the other hand, section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, we will consider your section 552.101 claims. Among the records at issue are confidential medical records that may only be released in accordance with the Texas Medical Practice Act (the "MPA"), title 3, subtitle B of the Occupations Code. *See* Open Records Decision No. 598 (1991). Section 159.002(b) of the MPA provides the following:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

The release of the "medical records" is governed by the MPA. Accordingly, the department is authorized to release those records only as specified in chapter 159 of the Occupations Code. We have designated these documents accordingly.

The records at issue also contain drivers' license numbers. Section 552.130(a)(1) of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold all Texas drivers' license numbers pursuant to section 552.130(a)(1) of the Government Code.

In summary, the department is required to withhold all medical records except in accordance with the MPA. Additionally, the department must withhold all driver's license numbers pursuant to section 552.130 of the Government Code. All remaining responsive records must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Burns", with a stylized flourish at the end.

Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/RWP/seg

Ref: ID# 143943

Encl. Submitted documents

cc: Mr. Coy Johnson  
Johnson Law Firm  
609 Gilmer Street  
Sulfur Springs, Texas 75482  
(w/o enclosures)